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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

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OFFICE OF PETITIONS

In re Application of :
Nicholls et al. : DECISION ON PETITION
Application No. 09/315,680 :
Filed: May 20, 1999 :
Atty Docket No. 7210-000001/ :

This is a decision on the twice renewed petition filed on February 8, 2008, under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by a named inventor.¹

The petition is before the Office of Patent Legal Administration for decision.

The petition is **GRANTED**.

REVIEW OF FACTS

1. On May 20, 1999, the application was filed as an application for reissue of U.S. Patent No. 5,631,827.
2. On August 25, 2006, an Office communication was mailed, requiring a supplemental reissue declaration. A one (1) month shortened statutory period for reply was set.

¹ Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

3. On October 9, 2006, a response consisting of an amendment and a petition for a one (1) month extension of time were filed. No supplemental reissue declaration was filed on October 9, 2006.

4. On February 13, 2007, a petition was filed, along with a supplemental reissue declaration naming Peter Nicholls, Robert Kinyon, Jeff Skaistis, Steve Johnson, Andy Locker, Chris Guzik, and Scott Howard, as joint inventors. The supplemental reissue declaration was signed by all inventors except joint inventors Nicholls and Johnson. Petitioners asserted joint inventors Nicholls and Johnson could not be located or refused to sign the supplemental reissue declaration.

5. On May 16, 2007, the petition was dismissed because petitioners had not shown diligent efforts had been made to contact the non-signing inventor, and because the supplemental reissue declaration was defective.

6. On December 7, 2007, a renewed petition was filed.

7. On January 15, 2008, the renewed petition was dismissed because the reissue declaration did not list the residence and mailing address for non-signing inventor Nicholls.

8. On February 8, 2008, the present renewed petition was filed, with a new reissue declaration listing the residence and mailing address for non-signing inventor Nicholls.

DECISION ON PETITION UNDER 37 CFR 1.183
TO WAIVE §§ 1.67 AND 1.175

In view of the efforts recounted in the petition to locate and obtain the signatures of Peter Nicholls and Steve Johnson on the supplemental declaration in compliance with 37 CFR 1.175, it is agreed that justice would be served by waiving the requirement for the signature of joint inventors Nicholls and Johnson on the supplemental declaration filed on February 8, 2008.

CONCLUSION

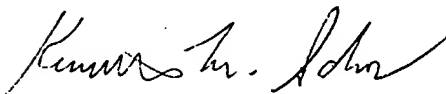
1. The petition is granted.

2. As the petition fee was previously paid, no additional petition fee is due with this renewed petition. Therefore, the fee paid with the present request for reconsideration will be credited to counsel's deposit account, No. 16-0605.

3. The application is being referred to Technology Center Art Unit 3692 for further processing.

4. Telephone inquiries related to this decision only should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

5. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-3282.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy